

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA . CR. NO. H-10-765-1  
VS. . HOUSTON, TEXAS  
PANALPINA, INC. . DECEMBER 7, 2010  
10:05 A.M. to 10:39 A.M.

TRANSCRIPT of REARRAIGNMENT/SENTENCING  
BEFORE THE HONORABLE VANESSA D. GILMORE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

MS. STACEY K. LUCK  
U.S. Department of Justice  
Criminal Division  
Fraud Section  
1400 New York Avenue, NW  
Room 4408  
Washington, DC 20005

MR. ADAM G. SAFWAT  
U.S. Department of Justice  
950 Constitution Avenue, NW  
Washington, DC 20530

FOR THE DEFENDANT:

MR. RICHARD N. DEAN  
Baker & McKenzie LLP  
815 Connecticut Avenue, NW  
Washington, DC 20006

MR. DOUGLAS M. TWEEN  
Baker & McKenzie LLP  
1114 6th Avenue  
New York, New York 10036

ALSO PRESENT:

MR. ROBERT ERNEST  
MR. STEPHAN GUSSMANN

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

APPEARANCES CONTINUED

OFFICIAL COURT REPORTER:

MS. KATHY L. METZGER  
U.S. Courthouse  
515 Rusk  
Room 8004  
Houston, Texas 77002  
713-250-5208

1 P R O C E E D I N G S

2 *THE COURT:* Good morning, everybody. Please be  
3 seated.

4 All right. United States of America versus  
5 Panalpina, Inc. For the United States, please?

6 *MS. LUCK:* Yes, good morning, Your Honor. Stacey Luck  
7 and Adam Safwat for the Department of Justice.

8 *MR. SAFWAT:* Good morning, Your Honor.

9 *THE COURT:* Good morning.

10 And for the defendant Panalpina, Inc., please?

11 *MR. TWEEN:* Good morning, Your Honor. Douglas Tween  
12 and Richard Dean of Baker and McKenzie.

13 *THE COURT:* All right.

14 *MR. TWEEN:* And with us at counsel table are Robert  
15 Ernest --

16 *THE COURT:* Mr. Robert Ernest, who is?

17 *MR. TWEEN:* General counsel of Panalpina, Inc.

18 *THE COURT:* Okay.

19 *MR. TWEEN:* And, also, Mr. Stephan Gussmann, who is  
20 director of government affairs for Panalpina World Transport  
21 Holding, Limited, the parent company of Panalpina, Inc.

22 *THE COURT:* All right. So, Mr. Ernest will be here  
23 representing Panalpina, Inc., as the corporate representative  
24 for purposes of this morning's proceedings; is that correct,  
25 Mr. Tween?

1           *MR. TWEEN:* It is, Your Honor.

2           *THE COURT:* All right. Then come on up, please,  
3 lawyers and Mr. Ernest.

4                       Would you state your name for the record, please,  
5 sir.

6           *MR. ERNEST:* Robert Ernest.

7           *THE COURT:* And do I understand that you wish to enter  
8 a plea of guilty, sir, on behalf of Panalpina, Inc., as their  
9 corporate -- what is your title, your full title? Corporate --

10          *MR. ERNEST:* Corporate secretary and --

11          *THE COURT:* And general counsel?

12          *MR. ERNEST:* Yes.

13          *THE COURT:* As corporate secretary and general  
14 counsel, is that correct?

15          *MR. ERNEST:* That is correct, Your Honor.

16          *THE COURT:* All right. I need to ask you some  
17 questions. Before doing so, sir, I need you to be sworn.

18               *(Robert J. Ernest sworn)*

19          *THE COURT:* All right. State your full name, please.

20          *MR. ERNEST:* Robert J. Ernest.

21          *THE COURT:* State your title, please.

22          *MR. ERNEST:* Corporate secretary and general counsel  
23 for Panalpina, Inc.

24          *THE COURT:* And you are here this morning, I  
25 understand, to enter a plea of guilty for Panalpina, Inc., with

1 respect to the charges pending against them in this court; is  
2 that correct, sir?

3 *MR. ERNEST:* That is correct.

4 *THE COURT:* Do you have authority from Panalpina,  
5 Inc.'s corporate offices to enter this plea?

6 *MR. ERNEST:* Yes.

7 *THE COURT:* And what is the -- in what form has that  
8 authority taken?

9 *MR. ERNEST:* Corporate resolution, Your Honor.

10 *THE COURT:* All right. And when was that corporate  
11 resolution done, if you know?

12 *MR. ERNEST:* October 25th, I believe. I'm sorry.  
13 September 10th, 2010.

14 *THE COURT:* All right. Great. All right. Then,  
15 Mr. Ernest, have you received a copy of the information that is  
16 pending against Panalpina, Inc., in this matter?

17 *MR. ERNEST:* Yes, Your Honor.

18 *THE COURT:* And have you and the members of the board  
19 of Panalpina, Inc., had an opportunity to fully review and  
20 discuss those charges with your counsel, Mr. Tween and  
21 Mr. Dean?

22 *MR. ERNEST:* Yes, Your Honor.

23 *THE COURT:* And are you on behalf of Panalpina, Inc.,  
24 satisfied with the counsel and representation that your lawyers  
25 have provided to you in this matter?

1           *MR. ERNEST:* Yes.

2           *THE COURT:* Do you need any additional time today to  
3 speak with your lawyers or talk with your lawyers before you  
4 enter a plea of guilty on behalf of Panalpina, Inc.?

5           *MR. ERNEST:* No, Your Honor.

6           *THE COURT:* All right. Mr. Tween, have you had  
7 sufficient time to investigate the law and the facts concerning  
8 the case against your client Panalpina, Inc.?

9           *MR. TWEEN:* I have, Your Honor.

10          *THE COURT:* And do you believe that Panalpina, Inc.,  
11 understands the nature of the charges pending against them?

12          *MR. TWEEN:* I do.

13          *THE COURT:* Has Panalpina, Inc., been able to  
14 cooperate with you in every respect with regard to the charges  
15 pending against them?

16          *MR. TWEEN:* Yes, it has.

17          *THE COURT:* And you are satisfied that the corporate  
18 resolution to enter a plea of guilty in this case is proper and  
19 is sufficient?

20          *MR. TWEEN:* I am.

21          *THE COURT:* And that Mr. Robert Ernest has authority  
22 to enter a plea on behalf of Panalpina, Inc.?

23          *MR. TWEEN:* Yes.

24          *THE COURT:* All right. Mr. Gussmann, you can have a  
25 seat, if you would like, sir. I'm so sorry.

1                   Do you know of any reason that Panalpina, Inc.,  
2 should not plead guilty to the charges pending against them?

3           *MR. TWEEN:* I do not.

4           *THE COURT:* Do you know of any meritorious defenses  
5 that they would have to the counts to which they have indicated  
6 they wish to plead guilty?

7           *MR. TWEEN:* I do not.

8           *THE COURT:* All right. Ms. Luck, is there a plea  
9 agreement in this case?

10          *MS. LUCK:* Yes, there is, Your Honor.

11          *THE COURT:* And would you state what section of Rule  
12 11 it's filed pursuant to.

13          *MS. LUCK:* 11(c)(1)(C), Your Honor.

14          *THE COURT:* Would you state for the record the terms  
15 of the plea agreement.

16          *MS. LUCK:* Your Honor, in short, the terms of the plea  
17 agreement include the defendant pleading guilty, agreeing to,  
18 of course, appear before the Court, abide by any terms that the  
19 Court may impose. It also includes an agreement to pay a  
20 criminal penalty of \$70,560,000, assuming the Court accepts  
21 that penalty amount. It also requires that the company be on a  
22 term of supervise -- or probation, whether that be supervised  
23 or unsupervised is up to the Court of course, for a period of  
24 three years. During that period of three years the company is  
25 required to provide a written annual report and provide

1 periodic reporting to the Department regarding their compliance  
2 measures as further described in Attachments C and D to the  
3 plea agreement. It also includes the tax assessment of \$400  
4 per count to be paid to the clerk of the court.

5           *THE COURT:* Okay. Don't you think that the Justice  
6 Department will be providing sufficient supervision with  
7 respect to the issues that the defendant has agreed to over the  
8 course of the next three years such that supervised  
9 provision -- supervised probation would probably be  
10 unnecessary?

11           *MS. LUCK:* Absolutely, Your Honor.

12           *THE COURT:* Okay. All right. I just wanted to make  
13 sure. I figured as much --

14           *MS. LUCK:* Yes.

15           *THE COURT:* -- but it seems like a waste of resources  
16 is why I'm asking.

17           *MS. LUCK:* Agreed.

18           *THE COURT:* All right. Mr. Ernest, are those the  
19 terms of Panalpina, Inc.'s agreement with the United States as  
20 you understand them?

21           *MR. ERNEST:* Yes, Your Honor.

22           *THE COURT:* Has anybody made any different promise or  
23 assurance to your company to induce them to enter into this  
24 plea of guilty?

25           *MR. ERNEST:* No.



1           *THE COURT:* Do you believe that Panalpina, Inc., was  
2 forced to plead guilty in this case?

3           *MR. ERNEST:* No.

4           *THE COURT:* Do you understand that as this is a plea  
5 that is being proposed under 11(c) (1) (C), that if I choose not  
6 to follow the terms of the plea agreement, that I will give you  
7 and opportunity to withdraw the plea of guilty and if you  
8 choose not to withdraw the plea, that I may impose a more  
9 severe sentence without being bound by the plea agreement?

10          *MR. ERNEST:* I understand that, yes.

11          *THE COURT:* Okay. The maximum possible penalty  
12 provided by law for the crimes to which Panalpina, Inc., has  
13 indicated they wish to plead guilty are as follows: Under  
14 Count 1, conspiracy, a maximum fine of \$500,000 or twice the  
15 pecuniary gain to the defendant or loss to the victims and a  
16 probation term of up to five years.

17                 And under Count 2, aiding and abetting the  
18 creation of false books and records, a maximum fine of  
19 \$25 million or twice any pecuniary gain to the defendant or  
20 loss to the victims and a maximum term of probation of five  
21 years. Do you understand, sir?

22          *MR. ERNEST:* Yes, Your Honor.

23          *THE COURT:* Do you also understand that for each  
24 offense you must pay a special assessment of \$400 for each  
25 count of the indictment in this case? That would be \$800 for

1 the two counts of conviction.

2 MR. ERNEST: Yes, Your Honor.

3 THE COURT: All right. I have one question.

4 *(Judge conferring with probation officer at the bench, off*  
5 *the record)*

6 THE COURT: The Sentencing Commission has developed  
7 advisory guidelines for judges to assist us in determining the  
8 appropriate sentence in criminal cases. Have you had an  
9 opportunity to speak with your lawyers about how the sentencing  
10 guidelines would be calculated in this particular case?

11 MR. ERNEST: Yes, Your Honor.

12 THE COURT: Ordinarily the Court would have a  
13 presentence investigation report prepared by the probation  
14 department. In this particular instance the parties, both the  
15 United States and the defendants, have filed an agreed motion  
16 to waive the presentence investigation report; is that correct?

17 MR. ERNEST: That is correct.

18 THE COURT: And in that agreed motion to waive the  
19 presentence investigation report, the parties have calculated  
20 what they believe the appropriate offense level and the  
21 appropriate culpability score is for purposes of determining  
22 what the fine would be; is that correct?

23 MR. ERNEST: That is correct, Your Honor.

24 THE COURT: And that is -- and that calculation and  
25 the motion are agreed to by Panalpina, Inc.; is that correct?

1           *MR. ERNEST:* Yes, Your Honor.

2           *THE COURT:* All right. Do you understand that  
3 according to the plea agreement that was entered into this  
4 case, that by entering a plea of guilty that you will have  
5 waived or given up your right to appeal all or any part of the  
6 sentence that is imposed by this Court?

7           *MR. ERNEST:* Yes, Your Honor.

8           *THE COURT:* All right. Do you understand that on  
9 behalf of Panalpina, Inc., that the defendant has the right to  
10 plead not guilty to the offense charged against them and to  
11 persist in that plea? And if they did so, they would have the  
12 right to a trial by jury and at that trial they would be  
13 presumed to be innocent and the government would have to prove  
14 their guilt beyond a reasonable doubt. And that Panalpina  
15 would have the right to the assistance of counsel for their  
16 defense and the right to see and hear all witnesses and have  
17 them cross-examined in their defense and the right to decline  
18 to provide any testimony or evidence unless they voluntarily  
19 elected to do so in their own defense and the right to issuance  
20 of subpoenas and other compulsory process to compel the  
21 attendance of witnesses to testify in their defense. And that  
22 if they decided not to testify or provide any testify or  
23 evidence, that that fact could not be used against them during  
24 trial.

25           *MR. ERNEST:* I understand that, Your Honor.

1           *THE COURT:* Do you understand that by entering a plea  
2 of guilty, that if that plea is accepted by this Court, that  
3 there will be no trial by jury and the defendant will have  
4 waived or given up the right to a trial by jury as well as any  
5 of the other rights associated with the trial by jury that I  
6 have described to you?

7           *MR. ERNEST:* Yes, Your Honor.

8           *THE COURT:* All right. The charges to which you have  
9 indicated you wish to enter a plea of guilty on behalf of  
10 Panalpina, Inc., are as follows: Under Count 1, conspiracy,  
11 the elements of which are as follows: First, that the  
12 defendant and at least one other person made an agreement to  
13 commit the crime of violating the books and records provision  
14 of the Foreign Corrupt Practices Act as charged in the criminal  
15 information. Second, that the defendant knew of the unlawful  
16 purpose of the agreement; third, that the defendant joined in  
17 the agreement willfully, that is, with the intent to further  
18 its unlawful purpose; and, fourth, that one of the conspirators  
19 during the existence of the conspiracy knowingly committed at  
20 least one of the overt acts described in the criminal  
21 information in order to accomplish some object or purpose of  
22 the conspiracy.

23                   Under Count 2, aiding and abetting the creation  
24 of false books and records, the elements of which are as  
25 follows: Aiding and abetting, first, that the offense of

1 violating the books and records provision of the Foreign  
2 Corrupt Practices Act was committed by some person; second,  
3 that the defendant associated with the criminal venture; third,  
4 that the defendant purposefully participated in the criminal  
5 venture; and, fourth, that the defendant sought by action to  
6 make that venture successful. In this instance the venture was  
7 falsification of books and records. The elements of which are  
8 that a company was an issuer that was required to file reports  
9 under federal law and to keep accurate books, records, and  
10 accounts; and, second, that the issuer or an officer, director,  
11 or employee of the issuer knowingly falsified its books,  
12 records, and accounts.

13 Do you understand what the government is claiming  
14 that Panalpina, Inc., has done to violate the law?

15 *MR. ERNEST:* Yes, Your Honor.

16 *THE COURT:* Did they commit these crimes?

17 *MR. ERNEST:* Yes, Your Honor.

18 *THE COURT:* Ms. Luck, would you please make a  
19 representation of the facts that the government would be  
20 prepared to prove if this case were to proceed to trial.

21 *MS. LUCK:* Yes, Your Honor. Had this matter proceeded  
22 to trial, the government would have proven beyond a reasonable  
23 doubt that the defendant, Panalpina, Inc., a New York  
24 corporation with offices throughout the United States,  
25 including an office here in Houston, Texas, through its

1 employees conspired and agreed and, in fact, did with its  
2 customers' knowledge pay bribes on behalf of their customers  
3 and for the benefit of themselves in Nigeria in order to secure  
4 an improper advantage.

5           During the course of this and as charged in the  
6 information, the defendant conspired, agreed, and did create  
7 false documents in the form of invoices that were designed to  
8 mask the true nature of the bribes that were paid on the  
9 customers' behalf. From approximately 2002 to 2007  
10 approximately \$27 million in bribes were paid to Nigerian  
11 officials on behalf of customers, those customers who were  
12 issuers, who were, in fact, a publicly-traded company --  
13 publicly-traded companies located in the United States for the  
14 purposes of securing an improper advantage.

15           Panalpina further assisted its customers who were  
16 publicly-traded companies in creating false books and records.

17           *THE COURT:* Okay. Mr. Ernest, you've heard the facts  
18 that the government has indicated it would be prepared to prove  
19 against you if this case were to proceed to trial. Having  
20 heard those facts, sir, how do you now plead to the charges  
21 pending against Panalpina, Inc., in this case, guilty or not  
22 guilty, sir?

23           *MR. ERNEST:* Guilty, Your Honor.

24           *THE COURT:* Are you ready to sign the plea agreement  
25 under oath at this time, sir?

1           *MR. ERNEST:* Yes.

2           *THE COURT:* All right.

3           *THE CASE MANAGER:* Judge, the copy had already been  
4 signed, the original.

5           *THE COURT:* All right.

6           *THE CASE MANAGER:* So, I'm just taking it and then  
7 signing it myself saying that we accepted it today.

8           *THE COURT:* Okay.

9           *THE CASE MANAGER:* Raise your right hand, please.

10                   Do you solemnly swear that you have read and  
11 understand this plea agreement and you willingly signed this  
12 plea agreement at this time, so help you God?

13           *MR. ERNEST:* Yes.

14           *THE COURT:* Then it is the finding of this Court in  
15 the case of United States of America versus Panalpina, Inc.,  
16 that the defendant is fully competent and capable of entering  
17 an informed plea, that the defendant is aware of the nature of  
18 the charges and the consequences of the plea, that the plea of  
19 guilty is a knowing and voluntary plea supported by an  
20 independent basis in fact containing each of the essential  
21 elements of the offense. The plea is therefore accepted and  
22 the defendant, Panalpina, Inc., is now adjudged guilty of the  
23 offenses charged in Counts 1 and 2 of the criminal information.

24                   All right. As the parties have waived the  
25 preparation of the presentence investigation report and filed

1 an agreed motion to waive the presentence investigation report  
2 and proceed directly to sentence, the Court will proceed  
3 directly to sentencing at this time.

4 All right. Ms. Luck, I already asked Mr. Ernest  
5 on behalf of Panalpina, but the motion to waive the presentence  
6 investigation report was an agreed motion between -- on both  
7 the United States and Panalpina; is that correct?

8 *MS. LUCK:* Yes, Your Honor.

9 *THE COURT:* And the parties have proposed a  
10 calculation of the offense level culpability score and the fine  
11 range in the context of that motion; is that correct?

12 *MS. LUCK:* Yes, Judge.

13 *THE COURT:* Okay. And both sides agree that those  
14 would be the appropriate calculations for the Court to consider  
15 with respect to the sentencing in this case?

16 *MS. LUCK:* Yes, Judge.

17 *THE COURT:* All right. Then the Court adopts the  
18 findings that are set forth in the parties' agreed motion to  
19 waive the presentence investigation report with respect to the  
20 counts at issue in the information Count 1 and Count 2, and  
21 finds that the statutory range of punishment is a probation  
22 term for both Counts 1 and 2 of one to five years; a fine range  
23 on Count 1, \$500,000 to twice the gross gain or loss; on Count  
24 2, \$25 million or twice the gross gain or loss; and a special  
25 assessment of \$400 per count for a total of \$800.



1 Under the Sentencing Guidelines, based on a total  
2 offense level of 36 and a culpability score of 8, provides for  
3 a base fine range of 45,500,000 and a final calculated fine  
4 range based on the applicable multipliers of 72,800,000 to  
5 145,600,000.

6 Okay. The government has filed a motion for  
7 downward departure pursuant to Section 8C4.1 of the Sentencing  
8 Guidelines. Ms. Luck, do you want to say anything specific  
9 with respect to the government's motion for downward departure?

10 *MS. LUCK:* Other than to say, Your Honor, under 8C4.1  
11 that the government does believe that this company did provide  
12 a substantial assistance in our investigation of other  
13 companies, three of which, in fact, did enter into deferred  
14 prosecution agreements which were filed in this courthouse last  
15 month. And as a procedural and a housekeeping matter, Your  
16 Honor, last night we e-mailed courtesy copies to the Court to  
17 make sure that you had it.

18 *THE COURT:* I did get it actually.

19 *MS. LUCK:* Okay. And I have a signed copy for filing  
20 for the Court right now.

21 *THE COURT:* Okay. And, so, the recommendation then is  
22 for the fine as to each of Counts 1 and 2 to be \$70,560,000; is  
23 that correct?

24 *MS. LUCK:* Yes, Your Honor.

25 *THE COURT:* Okay. Then the government's motion for

1 downward departure is granted for the reasons set forth in the  
2 motion.

3 All right. Mr. Tween, would you like to say  
4 anything on behalf of your client, please?

5 MR. TWEEN: Your Honor, as to in general as to the  
6 terms of the plea agreement or specifically with regards to the  
7 fine?

8 THE COURT: Anything at all. It's your colloquy,  
9 anything you would like to say.

10 MR. TWEEN: Okay. Your Honor, one thing I would like  
11 to raise is that the plea agreement contemplates that the fine  
12 be paid in four equal installments.

13 THE COURT: Yes, sir.

14 MR. TWEEN: One within ten days and the other on a  
15 one-year anniversary, two-year anniversary, and a three-year  
16 anniversary of today.

17 THE COURT: Let me say something about that just so  
18 you won't be caught off-guard by this when I say it at the  
19 announcement of the sentence. The final payment, the third  
20 payment actually has to be paid on the day -- the fourth  
21 payment, I mean to say, has to actually be paid the day before  
22 the anniversary date of the sentencing. That's because  
23 under -- just the way it happens in our court, the term of  
24 probation actually ends on the anniversary date of the  
25 sentencing and so the final payment has to be paid the day

1 before. So, today is December 7th. So, the fourth payment  
2 would actually have to be December the 6th. I'm going to  
3 actually be saying that in the context of the sentencing, but I  
4 just wanted you to know that so that you didn't hear it for the  
5 first time then and wonder what it was all about.

6 *MR. TWEEN:* Understood. And in connection with that,  
7 Your Honor, we would also ask that Your Honor waive the payment  
8 of any interest given that the plea agreement, as I said,  
9 contemplates that the payout be made over three years. We  
10 would ask that the Court waive interest payments.

11 *THE COURT:* Is there any objection to that by the  
12 United States?

13 *MS. LUCK:* No, Judge.

14 *THE COURT:* All right. Thank you.

15 *MR. TWEEN:* Other than that, Your Honor, we would just  
16 say that we agree with the government's motion for a downward  
17 departure. We think that the grounds are fair and accurate.  
18 We think that the company has, in fact, provided substantial  
19 assistance to the government in the investigation and  
20 prosecution of other companies and individuals and that we  
21 think that the recommended penalty when considered in context  
22 with all of the other compliance obligations and reporting  
23 obligations to the Department of Justice that the company is  
24 undertaking are fair and reasonable and are an appropriate  
25 disposition in this case.

1           *THE COURT:* And the company has indicated its  
2 willingness to adhere to the enhanced compliance obligations  
3 with the Justice Department?

4           *MR. TWEEN:* It has, Your Honor.

5           *THE COURT:* All right. Okay. Mr. Ernest, would you  
6 like to say anything on behalf of your client?

7           *MR. ERNEST:* Yes, Your Honor. Only to represent to  
8 the Court that we are, in fact, a different company today than  
9 we were when this conduct occurred. Thank you.

10          *THE COURT:* Okay. Thank you. I appreciate it.

11                   Anything else from the United States, Ms. Luck?

12          *MS. LUCK:* Again, one other housekeeping item, Your  
13 Honor. It's the sentencing data sheet. Again, we sent a  
14 courtesy copy. I have an amended copy of the sentencing data.  
15 I realized that there was an error in it, so that --

16          *THE COURT:* Did you see that name?

17          *MS. LUCK:* Yes.

18          *THE COURT:* Okay.

19          *MS. LUCK:* So, that has been corrected, and I've also  
20 signed it again for filing.

21          *THE COURT:* Okay.

22          *MS. LUCK:* And I'm going to give that to the clerk.

23          *THE COURT:* Perfect.

24          *MS. LUCK:* Thank you.

25          *THE COURT:* Anything else then from the United States?

1           *MS. LUCK:* No, Judge.

2           *THE COURT:* All right. The Court will state the  
3 sentence at this time. The lawyers will have a final  
4 opportunity to make any objections before the sentence is  
5 finally imposed.

6                     It is the judgment of this Court that the  
7 defendant organization Panalpina, Inc., is hereby placed on  
8 unsupervised probation for a term of three years as to each of  
9 Counts 1 and 2, such terms to run concurrently for a total term  
10 of probation of three years.

11                    The defendant is before this Court today having  
12 pled guilty to one count of conspiracy to violate the books and  
13 records provision of the Foreign Corrupt Practices Act and one  
14 count of aiding and abetting the creation of false books and  
15 records under the Foreign Corrupt Practices Act.

16                    The United States has filed a motion for downward  
17 departure based on the defendant's substantial assistance and  
18 has represented to the Court that the defendant has  
19 substantially assisted the government in showing compliance  
20 with the Foreign Corrupt Practices Act by this defendant as  
21 well as providing substantial assistance with respect to other  
22 violations outside of Panalpina, Inc.

23                    The Justice Department has also satisfied itself  
24 that the defendant can pay the fine -- the contemplated fine  
25 that is proposed under the plea agreement and that a reasonable

1 disposition of this case is the payment of that fine over four  
2 equal installments occurring -- the first occurring within the  
3 next ten days and the next three over the next three years.

4 The Court believes that the punishment that is contemplated and  
5 agreed to between the parties based on the Rule 11(c)(1)(C)  
6 plea agreement is sufficient but not greater than necessary and  
7 meets all of the sentencing objectives of punishment,  
8 deterrence, and incapacitation in this case.

9           While on probation, the defendant organization  
10 Panalpina, Inc., shall not commit another federal, state, or  
11 local crime; shall comply with the standard organizational  
12 conditions that have been adopted by this Court; and shall  
13 abide by any mandatory conditions required by law, including  
14 the following additional conditions: The defendant is to  
15 adhere to enhanced compliance obligations with the Justice  
16 Department.

17           The defendant organization Panalpina, Inc., shall  
18 pay a fine in the amount of \$70,560,000 as to each of Counts 1  
19 and 2, such fine to run concurrently for a total fine of  
20 \$70,560,000.

21           Payment is to be made in four equal annual  
22 installments as follows: The first payment is due within ten  
23 days of today. The second and third payments are due on the  
24 anniversary of this sentencing date, December 7th; and the  
25 fourth payment is to be made on December 6th, the day before

1 the anniversary date of the sentencing and the day before the  
2 probation term expires.

3 The interest payment on the fine will be waived,  
4 as the plea agreement contemplated that the fine will be paid  
5 over a course of three years.

6 In addition, the Court assesses a special  
7 assessment of \$400 per count for a total of \$800 due and  
8 payable immediately.

9 Ms. Luck, do you know of any reason why this  
10 sentence should not be imposed as stated?

11 *MS. LUCK:* No, Judge.

12 *THE COURT:* Mr. Tween, do you know of any reason why  
13 this sentence should not be imposed as stated?

14 *MR. TWEEN:* No, Your Honor.

15 *THE COURT:* Then the sentence is imposed as stated.

16 Mr. Ernest, you may appeal your conviction -- the  
17 conviction of Panalpina if you think that the plea was somehow  
18 unlawful or involuntary or if you think there was some other  
19 fundamental defect in the proceedings that was not waived.  
20 However, in the context of this plea agreement, Panalpina  
21 agreed to waive their right to appeal. Those waivers are  
22 generally enforceable. If you think that your waiver is  
23 unenforceable for some reason, you can present that theory to  
24 the Court of Appeals. With few exceptions, any notice of  
25 appeal must be filed within ten days of the date that judgment

1 is entered in this case. Do you understand me, sir?

2 MR. ERNEST: Yes.

3 THE COURT: Is there anything else from the United  
4 States?

5 MS. LUCK: No, Your Honor.

6 THE COURT: Anything else from the defense?

7 MR. TWEEN: No, Your Honor.

8 THE COURT: All right. That's it. Thank you guys.

9 MR. TWEEN: Thank you, Your Honor.

10 MS. LUCK: Thank you, Your Honor.

11 (Concluded at 10:39 a.m.)

12 \* \* \*

13 I certify that the foregoing is a correct transcript from the  
14 record of proceedings in the above-entitled cause, to the best  
15 of my ability.

16

17 /s/ Kathy L. Metzger  
18 Kathy L. Metzger  
Official Court Reporter

12-14-10  
Date

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